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In the Supreme Court of the United States

OCTOBER TERM, 1984

CASPAR W. WEINBERGER,
SECRETARY OF DEFENSE, ET AL, PETITIONERS

v.

TEMISTOCLES RAMIREZ DE ARELLANO, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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40 pp

QUESTIONS PRESENTED

This suit for declaratory and injunctive relief was brought by respondents against the Secretary of Defense, the Secretary of State, and the Chief of the United States Army Corps of Engineers to challenge the participation by United States military and civilian personnel in training activities at a Regional Military Training Center (RMTC) that was established on respondents' property in Honduras pursuant to official decrees of the Congress and President of Honduras.

The questions presented are:

1. Whether the suit is barred by the political question doctrine because it interferes with military affairs abroad and the conduct of foreign relations.
2. Whether the suit is barred by the act of state doctrine because it calls into question the official Honduran decrees establishing the RMTC as an undertaking of the Government of Honduras.
3. Whether the suit is barred by principles of equitable discretion precluding a court from enjoining such a military training activity on foreign soil.
4. Whether the complaint must be dismissed or summary judgment granted for the government because petitioners' actions are fully authorized by the Constitution and Acts of Congress.

PARTIES TO THE PROCEEDINGS

The petitioners are Caspar W. Weinberger, Secretary of Defense; George P. Shultz, Secretary of State; and Lieutenant General E.R. Heiberg III, Chief of the United States Army Corps of Engineers.

The respondents, as described in the complaint filed in the district court (C.A. App. 6), are Temistocles Ramirez de Arellano, a United States citizen who resides in Puerto Rico and Honduras; T. Ramirez & Company, Inc., a Puerto Rican corporation that is wholly owned by respondent Ramirez; Empacadora del Norte, S.A., a Puerto Rican corporation that is wholly owned by respondent Ramirez and respondent T. Ramirez & Company, Inc.; Inversiones Centroamericanas, S.A., a holding company that is incorporated in Honduras and is wholly owned by respondent Empacadora del Norte, S.A.; and three other Honduran corporations that are wholly owned by respondent Inversiones Centroamericanas, S.A.: Empacadora del Norte Honduras, S.A.; Empacadora de Castilla, S.A. de C.V.; and Ganadera de Trujillo, S.A.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Constitutional and statutory provisions involved	2
Statement	2
Reasons for granting the petition	12
Conclusion	29
Addendum	1a

TABLE OF AUTHORITIES

Cases:

Alfred Dunhill of London, Inc. v. *Cuba*, 425 U.S. 682	22
Allen v. *Wright*, No. 81-757 (July 3, 1984)	26
Baker v. *Carr*, 369 U.S. 186	20, 21
Banco Nacional de Cuba v. *Sabbatino*, 376 U.S. 398	22
Bi-Metallic Investment Co. v. *Colorado*, 239 U.S. 441	18
Dalehite v. *United States*, 346 U.S. 15	19
Dames & Moore v. *Regan*, 453 U.S. 654	18, 21, 27
Ellenwood v. *Marietta Chair Co.*, 158 U.S. 105	26
First National City Bank v. *Banco Nacional de Cuba*, 406 U.S. 759	24
Goldwater v. *Carter*, 444 U.S. 996	20
Haig v. *Agee*, 453 U.S. 280	16
Hawaii Housing Authority v. *Midkiff*, No. 83-141 (May 30, 1984)	14, 27
Johnson v. *Eisentrager*, 339 U.S. 763	19
Larson v. *Domestic & Foreign Corp.*, 337 U.S. 682	14
Logan v. *Zimmerman Brush Co.*, 455 U.S. 422	18
Malone v. *Bowdoin*, 369 U.S. 643	14
Oetjen v. *Central Leather Co.*, 246 U.S. 297	22
O'Shea v. *Littleton*, 414 U.S. 488	26

Cases—Continued: Page

Regan v. *Wald*, No. 83-436 (June 28, 1984) 4, 29
Ricaud v. *American Metal Co.*, 246 U.S. 304 22
Ruckelshaus v. *Monsanto Co.*, No. 83-296 (June 26, 1984) 14
Samuels v. *Mackell*, 401 U.S. 66 25
Simon v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 26
Steele v. *Bulova Watch Co.*, 344 U.S. 280 26
Sumitomo Shoji America, Inc. v. *Avagliano*, 457 U.S. 176 24
Underhill v. *Hernandez*, 168 U.S. 250 22
United States v. *Curtiss-Wright Export Corp.*, 299 U.S. 304 ..... 13, 15-16, 20
United States v. *50 Acres of Land*, No. 83-1170 (Dec. 4, 1984) 27
United States v. *S.A. Empresa de Viacao Aerea Rio Grandense (Varig Airlines)*, No. 82-1349 (June 19, 1984) 19
Weinberger v. *Romero-Barcelo*, 456 U.S. 305 25
Youngstown Sheet & Tube Co. v. *Sawyer*, 343 U.S. 579 ..... 18, 20

Constitution, treaties and statutes:

U.S. Const.:
Art. I, § 8, Cl. 17 14
Art. II, § 2 15
Amend. V (Due Process Clause) 2, 3, 14, 18, 1a
Bilateral Military Assistance Agreement, May 20, 1954, Honduras-United States, 5 U.S.T. 843 *et seq.* 4
5 U.S.T. 844 14
Treaty of Friendship, Commerce and Consular Rights, Dec. 7, 1927, United States-Honduras, art. I, 45 Stat. 2618-2619 14
Arms Export Control Act, 22 U.S.C. 2751 *et seq.* 4
Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, Tit. II, 97 Stat. 384 *et seq.* 9
§ 212(b), 97 Stat. 385-386 9

Constitution, treaties and statutes—Continued: Page

Continuing Appropriations, 1985—Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, § 127, 98 Stat. 1883 *et seq.* 8
98 Stat. 1893 ..... 8, 2a-3a
98 Stat. 1894 ..... 8, 9, 2a-3a
Foreign Assistance Act of 1961, 22 U.S.C. 2301 *et seq.* 4
§ 503, 22 U.S.C. 2311 ..... 2, 1a
§ 503(a), 22 U.S.C. 2311(a) 7, 1a
§ 503(a)(2), 22 U.S.C. 2311(a)(2) 15, 1a
§ 541, 22 U.S.C. 2347 ..... 2, 7, 1a
§ 541, 22 U.S.C. 2347(1) 15, 2a
Second Supplemental Appropriation Act, 1984, Pub. L. No. 98-396, 98 Stat. 1405 17
Tucker Act, 28 U.S.C. 1491 7
28 U.S.C. 1350 3

Miscellaneous:

130 Cong. Rec:
H4743 H4745 (daily ed. May 23, 1984) 21
H11940 (daily ed. Oct. 10, 1984) 8, 9, 17
H.R. Conf. Rep. 98-1080, 98th Cong., 2d Sess. (1984) 11, 21
H.R. Rep. 98-916, 98th Cong., 2d Sess. (1984) 17
Restatement (Second) of Conflicts of Laws (1971) .. 26
U.S. Dep't of State, *Briefing Book: Central America Democracy, Peace and Development Initiative* (Feb. 1984) 16

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of the Secretary of Defense, the Secretary of State, and the Chief of the United States Army Corps of Engineers, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The opinion of the en banc court of appeals (App., *infra*, 1a-167a) is reported at 745 F.2d 1500. The prior opinion of the panel of the court of appeals (App., *infra*, 168a-237a) is reported at 724 F.2d 143. The opinion of the district court (App., *infra*, 238a-247a) is reported at 568 F. Supp. 1236.

JURISDICTION

The judgment of the en banc court of appeals (App., *infra*, 248a-249a) was entered on October 5, 1984. By order dated December 27, 1984, the Chief Justice extended the time within which to file a petition for a writ

of certiorari to and including March 4, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fifth Amendment, relevant provisions of Sections 503 and 541 of the Foreign Assistance Act of 1961, 22 U.S.C. 2311 and 2347, and relevant portions of the first paragraph of Title III of the Foreign Assistance and Related Programs Appropriations Act of 1985, are reproduced in an addendum to this petition (Add., *infra*, 1a-3a).[1]

STATEMENT

1. a. This suit for declaratory and injunctive relief was filed by respondents in the United States District Court for the District of Columbia on July 13, 1983 against the Secretary of Defense, the Secretary of State, and the Chief of the Army Corps of Engineers. Respondents challenge the activities of United States military and civilian personnel in connection with a Regional Military Training Center (RMTC) in northern Honduras. The RMTC is situated on a portion of a 14,000-acre ranch that, according to the complaint, is owned by three Honduran corporations that in turn are owned, through intermediate corporations, by respondent Ramirez, a United States citizen who resides in Puerto Rico and Honduras. App., *infra*, 6a; C.A. App. 5-7.

By decree dated June 24, 1983, the National Congress of the Republic of Honduras formally approved the establishment of the RMTC in order to "permit the overall improvement of the Honduran Armed Forces and the technical training of military elements, both national as well as natives of friendly countries." At that time, the National Congress "authorize[d] the admission of military instructors and students, coming from friendly coun-

[1] The opinions below and other relevant materials are bound in a separate volume.

tries," to participate in the training activities at the RMTC. App., *infra*, 255a. On November 4, 1983, the President of Honduras issued a decree declaring that the RMTC is an activity "of the Armed Forces of Honduras" that performs the obvious, very important, and direct function of providing national security for the "State" (*id.* at 257a, 259a). The President therefore decreed that the property for the RMTC should be expropriated under the Law of Eminent Domain and the Land Reform Law and that "[e]stablished legal procedures shall apply to the appraisal of the property and to the payment of compensation to the owner(s), without prejudice to any agreements or direct negotiations between the Government of Honduras and/or the Armed Forces and the owner(s) of the property" (*id.* at 258a-259a).

b. In the instant suit, respondents contended that the actions of the Secretary of Defense, the Secretary of State, and the Chief of the Corps of Engineers in connection with the RMTC (i) are "beyond [their] express or implied authority under the laws and treaties of the United States and the United States Constitution," and (ii) have deprived respondents of the use and enjoyment of their property without prior notice and hearing, in violation of the Due Process Clause of the Fifth Amendment (C.A. App. 10-11).[2] Respondents sought a declaratory judgment that petitioners' conduct is unlawful and injunctive relief preventing petitioners "from seizing, occupying, or destroying [respondents'] property, or depriving [respondents] of the use and enjoyment thereof" (C.A. App. 12-13). Respondents did not seek any monetary relief (App., *infra*, 239a).

The relationship between Honduras and the United States was explained in district court in a sworn declaration by James H. Michel, the Principal Deputy Assistant

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[2] Respondents also alleged that these actions constituted a seizure of alien property by the United States in violation of the Law of Nations (C.A. App. 12; see 28 U.S.C. 1350). The panel found no cause of action under the Alien Tort Statute (App., *infra*, 189a), but the en banc court did not address that issue (*id.* at 17a n. 32).

Secretary of State for Inter-American Affairs (C.A. App. 47-52). Compare *Regan* v. *Wald*, No. 83-436 (June 28, 1984), slip op. 6 & n.11, 20. Mr. Michel stated that the Government of Honduras has "close and friendly diplomatic relations with the United States" and is "[t]hreatened by aggression from Nicaragua, which is aided and supported by Cuba and the Soviet Union" (C.A. App. 48). Honduras has participated in diplomatic efforts to seek peaceful solutions, while maintaining military readiness to defend its sovereignty and territorial integrity. In furtherance of these policies, Honduras established the RMTC to train its troops and those of friendly governments, principally El Salvador. *Ibid.*

Mr. Michel also explained that the United States "has assisted in the establishment of the [RMTC] facility and is assisting in the instruction of trainees" because "[t]he United States has a vital foreign policy interest in the security of Honduras and El Salvador" (C.A. App. 48). This assistance is granted pursuant to the Bilateral Military Assistance Agreement, May 20, 1954, Honduras-United States, 5 U.S.T. 843 *et seq.*, as well as the President's constitutional authorities, the Foreign Assistance Acts of 1961 (22 U.S.C. 2301 *et seq.*), and the Arms Export Control Act (22 U.S.C. 2751 *et seq.*). C.A. App. 49. However, Mr. Michel stressed that "[a]s a Honduran government facility, the RMTC is and from its inception has always been under the command, control and administration of the Honduran Armed Forces," and "[t]he Honduran Government controls access to and acquisition of the land used for the RMTC, provides physical security, and negotiates bilateral issues with other governments whose personnel receive training at the facility" (*ibid.*). The United States Government "provides technical assistance and services in design, construction, and training" (*ibid.*).

Finally, Mr. Michel averred that an injunction would "introduce friction into the bilateral relationship inso-

far as it entails a determination by a U.S. court that another state was not acting in its sovereign capacity, thus calling into question that sovereignty"; would "call into question the reliability and credibility of United States Government commitments to other states"; and would "leave doubt in the minds of both friends and adversaries that the United States is prepared to act decisively in the pursuit of its foreign policy goals" (C.A. App. 50-51).

c. Respondents sought to depose various diplomatic and military officials of the United States to inquire into such subjects as "[t]he extent to which the United States Government exercised control over the formation, creation, * * * and operation of the training center, the United States' activities at the training center, * * * and the extent to which the United States has alternatives available to it other than [respondents'] site" (7/15/83 Tr. 22). The district court denied the request (*id.* at 37). On August 24, 1983, the court dismissed the complaint on the ground that it raised nonjusticiable political questions (App., *infra*, 238a-247a).

2. A divided panel of the court of appeals affirmed the dismissal of the complaint (App., *infra*, 168a-237a). Although the panel rejected the district court's reliance on the political question doctrine (*id.* at 171a-173a), the majority held that general principles of equity bar this suit. It relied on a number of factors: the challenged activity is a military operation (*id.* at 174a, 176a); there would be difficulties in supervising compliance on foreign soil (*id.* at 174a-176a); an injunction intended to protect respondents' property rights under Honduran law would affect the activities of Honduran troops and "accuse them of having violated their own law in their own territory" (*id.* at 176a-179a); respondents, "four of which are Honduran corporations and the rest of which have voluntarily chosen to profit from the resources of Honduras," had not first attempted to obtain relief in Honduras (*id.* at 179a-180a); respondents' claims, al-

though cast in constitutional terms, are "entirely derivative" of their property rights under Honduran law (*id.* at 180a); and alternative relief would be available in a suit for money damages in the Claims Court if a taking by the United States has occurred (*id.* at 180a-187a). Judge Wilkey dissented (*id.* at 196a-237a).

3. a. On respondents' petition for rehearing, the en banc court, in a sharply divided 6-4 decision, reversed the dismissal of the suit and remanded for proceedings on the merits, including discovery by respondents into the circumstances of the United States' involvement with the RMTC (App., *infra*, 1a-167a). The majority first held that respondents' complaint stated claims for relief in its allegations that petitioners' actions were beyond their express or implied authority under the laws, treaties, and Constitution of the United States and deprived respondents of their property without due process of law (*id.* at 14a-17a). The majority next rejected the district court's reliance on the political question doctrine in dismissing the suit (*id.* at 17a-27a), principally because respondents did not challenge the presence of United States military personnel in Honduras generally or the furnishing of assistance to a RMTC, but instead challenged the presence of military personnel and the RMTC only on the particular land that is owned by the Honduran corporations controlled by respondent Ramirez (*id.* at 19a-20a, 22a-24a).

The majority also rejected the panel's conclusion that principles of equitable discretion bar the instant suit (App., *infra*, 39a-69a). It suggested in the process that injunctive relief requiring United States military personnel to withdraw from the premises might be available, even if their presence is fully authorized by Act of Congress and the Constitution, because, in the court's view, a monetary remedy might be "inadequate" if respondents' land is uniquely suited to ranching (*id.* at 54a-57a). Finally, the majority rejected the contention that the suit is barred by the act of state doctrine, in light

of the resolution of the Congress of Honduras and the decree by the President of Honduras that formally proclaimed the RMTC to be an activity of Honduras and expropriated the land in question for that purpose (App., *infra*, 69a-93a). The majority concluded that, notwithstanding these decrees, it was necessary for the district court to evaluate the extent of the activities of Honduran soldiers at the RMTC in order to determine whether it is actually an undertaking of the Government of Honduras (*id.* at 75a-76a, 81a, 82a, 84a, 87a).

b. Judge Tamm dissented (App., *infra*, 98a-110a). He concluded that injunctive relief would "necessarily result in an intolerable judicial intrusion into the conduct of foreign affairs" (*id.* at 101a), because it "would essentially dictate to the executive branch the proper situs or scope of a Central American military training facility" (*id.* at 104a) and would "detrimentally affect[] our relations with Honduras" by "implicitly question-[ing] Honduran sovereignty" (*id.* at 105a).

Judge Scalia filed a separate dissenting opinion, in which Judges Bork and Starr joined (App., *infra*, 111a-147a). He concluded that injunctive relief is barred because petitioners' actions are within the scope of the express statutory authority of the President to furnish military assistance and training in a foreign country (*id.* at 120a-122a, citing 22 U.S.C. 2311(a) and 2347) and because respondents may bring an action under the Tucker Act (28 U.S.C. 1491) for any taking of property that may be attributable to the United States as a result of these authorized activities (App., *infra*, 111a-124a). In addition, Judge Scalia reiterated the panel's reasoning that a number of equitable considerations bar injunctive or declaratory relief (*id.* at 134a-147a), observing that the principles of nonjusticability and separation of powers relied upon by Judge Tamm make it "clear beyond all doubt" that an award of injunctive relief in this case would be an abuse of discretion (*id.* at 138a-139a). Judge Starr, joined by Judge Scalia, also filed a separate

dissenting opinion in which he concluded that the suit is barred by the act of state doctrine (*id.* at 148a-167a).

4. Following the entry of judgment by the en banc court on October 5, 1984 (App., *infra*, 248a-249a), Congress passed and the President signed the Foreign Assistance and Related Programs Appropriations Act for fiscal year 1985,[3] which specifically addresses the status of the RMTC and respondents' claim. In the first paragraph of Title III of that Act, Congress appropriated $805,100,000 to the President for military assistance in carrying out the Foreign Assistance Act of 1961. § 127, 98 Stat. 1893. However, a proviso states that none of these funds shall be used for operation and maintenance of a RMTC in Honduras until the President provides the Senate and House Appropriations Committees with three items: (1) a report that the Government of Honduras has provided a permanent site for such a Center, assured full responsibility for any competing claims to such site, and provided written assurances to make the site available on a long-term basis for the training by the armed forces of other friendly countries in the region;[4] (2) a detailed plan for construction of a permanent center; and (3) "a determination that the Government of Honduras recognizes the need to compensate as required by international law the United States citizen [*i.e.*, respondent Ramirez] who claims injury from the establishment and operation of the existing Center, and that it is taking appropriate steps to discharge its obligations under international law" (98 Stat. 1894).

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[3] The Foreign Assistance Appropriations Act was enacted as Section 127 of the Continuing Appropriations, 1985—Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1883 *et seq.*

[4] The background of Congress's concerns is explained in the Conference Report, which notes the continuing border disputes between El Salvador and Honduras, recent decisions by the Honduran high command refusing to allow El Salvadoran training at the existing RMTC, and proposals by certain countries for eliminating military training schools in Central America. 130 Cong. Rec. H11940 (daily ed. Oct. 10, 1984).

In addition, Congress directed the President to submit reports 60 and 120 days after passage of the Act informing Congress of any progress in resolving respondent Ramirez's claim against Honduras. Congress further directed the President to submit a report 180 days after passage of the Act explaining the actions the President proposes to take if Honduras has failed to resolve the claim, including actions with regard to Honduras's continuing eligibility for preferential trade benefits under the Caribbean Basin Initiative [5] and its status under other expropriation-related legislation (98 Stat. 1894). The Conference Report makes clear, however, that Congress "support[s] the concept of such a Center and believe[s] that the President should have maximum flexibility to continue negotiating cost effective methods of providing necessary military training to Central American armed forces" (130 Cong. Rec. H11940 (daily ed. Oct. 10, 1984)).

We have been informed by the Departments of Defense and State that because issues pertaining to the RMTC have not yet been resolved in diplomatic discussions with Honduras—and because the President therefore has not yet made the determinations that are prerequisite for the use of fiscal year 1985 funds for a per-

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[5] The Caribbean Basin Economic Recovery Act was enacted as Title II of Pub. L. No. 98-67, 97 Stat. 384 *et seq.* Section 212(b) of that Act provides that the President shall not designate a country as a beneficiary country under the Act if it "has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation * * * which is 50 per centum or more beneficially owned by United States citizens," unless the President determines that prompt, adequate and effective compensation has been or is being made or the country is otherwise taking steps to discharge its obligations under international law. 97 Stat. 385-386. However, these restrictions do not prevent the President from designating the country for beneficiary status if he determines that such designation "will be in the national economic or security interest of the United States" and reports to Congress his reasons for that determination. *Id.* at 386.

manent RMTC—assistance to the existing facility is currently being furnished with funds remaining from fiscal year 1984 appropriations for foreign military assistance.

5. On November 3, 1984, the government filed a motion with the court of appeals for a stay of the mandate—which was then due to issue on November 12, 1984—pending the filing and disposition of a petition for rehearing discussing the effect on this case of the provisions of the 1985 Appropriations Act that specifically address the RMTC. The rehearing petition was timely filed on November 19, 1984. Nevertheless, on November 20, 1984, the court of appeals denied the government's motion for stay of the mandate (App., *infra*, 252a-253a), and by order dated December 6, 1984, the court, without explanation, directed the clerk not to file the government's rehearing petition (App., *infra*, 250a-251a). However, on January 2, 1985, the Chief Justice granted petitioners' application for a stay (No. A-477) of all further proceedings in district court pending the timely filing and disposition of a petition for a writ of certiorari.

6. a. On December 11, 1984, the Acting Secretary of State, on behalf of the President, submitted the first of the reports to Congress as required by the Appropriations Act proviso, discussed above (see page 9, *supra*; App., *infra*, 266a-267a). In that report, he noted that by letter dated December 14, 1983, in connection with its designation as a beneficiary under the Caribbean Basin Initiative, the Government of Honduras made a commitment to meet fully its treaty and international law obligations concerning respondents' claim and stated that, " 'upon request of the claimant,' " it agrees to submit the case to a national valuation proceeding and to conclude the proceeding within three months of the initiation of the proceeding (*id.* at 264a-265a). However, the Acting Secretary reported that respondent Ramirez "has not as yet requested that the outlined valuation process be initiated" (*id.* at 265a). He continued (*ibid.*):

> We believe the most appropriate next step is for Mr. Ramirez, like any other claimant abroad, to pursue fully remedies available under Honduran law, including the valuation process offered by the Government of Honduras [in December 1983], that will permit a full and fair hearing of all material issues. There is no prejudice to the status of his claims by pursuing local remedies, even should these eventually result in what he and we consider to be a denial of justice. The rule of exhaustion of remedies is a well-established part of international law.

The Acting Secretary also informed Congress that "[t]he claims of Mr. Ramirez continue to be under active discussion between the Honduran and the U.S. [G]overnments" and that "the Honduran Government has indicated a desire to relocate the RMTC to another site" (App., *infra*, 265a-266a). He stated that "[i]f the RMTC were to be relocated, we believe it would be legally satisfactory for Honduras to rescind its expropriation decree and restore the *status quo ante*, with compensation for any legitimate claims of intervening damages to Mr. Ramirez'[s] interests" (*ibid.*).[6]

b. On February 13, 1985, the Secretary of State submitted to Congress the second of the reports required by the Appropriations Act (App., *infra*, 268a-270a). He reported that on numerous occasions in the intervening two months, State Department officials in Washington and United States Embassy personnel in Honduras had reiterated to the Government of Honduras the need for resolution of respondents' claim and that "the Government of Honduras continued direct conversations with representa-

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[6] The Secretary of Defense made a similar report to the Senate and House of Representatives on December 8, 1984, pursuant to a reporting provision in the Conference Report on the Department of Defense Authorization Act for fiscal year 1985 (App., *infra*, 260a-262a). See H.R. Conf. Rep. 98-1080, 98th Cong., 2d Sess. 285-286 (1984).

tives of Mr. Ramirez" (*id.* at 269a). The Secretary further informed Congress that on February 6, 1985, the President of Honduras directed the Attorney General of Honduras to initiate the national valuation procedure described in the Honduran Government's December 14, 1983 letter. The Secretary assured Congress that the United States "will monitor closely this process" and that "the claims of Mr. Ramirez will have high priority in our broader discussions with the Government of Honduras" (*id.* at 269a-270a).

REASONS FOR GRANTING THE PETITION

The decision of the court of appeals sanctions an extraordinary and unprecedented judicial intrusion into the conduct of the Nation's military affairs and foreign relations. It provides for the district court to consider the propriety of the presence of United States military personnel on foreign soil, yet wholly ignores explicit statutory authority for the President to lend assistance to military training such as that conducted at the RMTC. It countenances an inquiry by the courts of the United States into the bona fides of the official declarations by the Congress and President of Honduras that the RMTC is an undertaking of the armed forces of Honduras and that compensation will be made by the Government of Honduras in accordance with international law. And it disregards the express views of the Legislative and Executive Branches of the United States Government that the RMTC is a facility of the Government of Honduras, that payment of compensation to respondents is the responsibility of Honduras, and that respondents' claim against Honduras should be pursued through local remedies and, if necessary, through diplomatic channels. To compound its cavalier disregard for the views of the coordinate Branches on these sensitive matters, the court of appeals inexplicably refused even to entertain the petition for rehearing filed by the Executive to explain the impact on this case of the intervening Act of Congress

that specifically addresses the RMTC and establishes a statutory procedure for resolving respondents' claim.[7]

The decision of the court of appeals cannot be squared with this Court's holdings regarding the doctrines of political question and act of state and the limitations on the granting of equitable relief. As Congress made clear in the fiscal year 1985 Appropriations Act, the manner in which the Government of the United States is to be involved in the resolution of respondents' claim is through diplomatic discussions with Honduras and, if appropriate, through the termination of economic benefits. Intrusion by the courts into that process could have serious adverse consequences for the Nation's foreign relations and security. Review by this Court therefore is warranted. Petition

1. Respondents' challenge to constitutional and statutory authority with respect to the RMTC is wholly without merit. The complaint should have been dismissed or summary judgment granted in favor of petitioners on this ground alone.

a. It cannot seriously be maintained that the Constitution prevents the Government of the United States from lending assistance to military training activities in another country. The right to form alliances and to enter into such military agreements is an integral aspect of the sovereignty that the United States possesses in a measure equal to that of all nations, see, *e.g.*, *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 315-318 (1936), and the ability to do so often is critical to the national security and to the effective conduct of foreign relations. Consistent with these principles, the United States, on May 20, 1954, entered into the Bilateral Military Assistance Agreement with the Government of Hon-

[7] The court of appeals failed to offer an explanation for its order directing the clerk not to file the government's rehearing petition. Although respondents filed an opposition to the government's motion for a stay of the mandate pending disposition of the rehearing petition, they did not suggest that the court could not entertain the rehearing petition.

duras "for the common defense and for the maintenance of the peace and security of the Western Hemisphere." 5 U.S.T. 844.

Nor does the Constitution prohibit the furnishing of military assistance at facilities constructed on property in the recipient country that previously was owned or controlled by a corporation that in turn is owned by a United States citizen. The United States Government itself may acquire private property within the United States, whether belonging to its own citizens or to aliens, for any public use (*Hawaii Housing Authority* v. *Midkiff*, No. 83-141 (May 30, 1984), slip op. 9-12), including the establishment of a military installation. See U.S. Const. Art. I, § 8, Cl. 17. Article I of the Treaty of Friendship, Commerce and Consular Rights, Dec. 7, 1927, United States-Honduras, 45 Stat. 2618-2619, similarly recognizes the right of each party to take property belonging to a national of the other party, subject only to the payment of just compensation. Moreover, just as the Fifth Amendment permits the government to acquire property first, with the payment of compensation to be determined in subsequent proceedings (see, *e.g.*, *Ruckelshaus* v. *Monsanto Co.*, No. 83-196 (June 26, 1984), slip op. 28), so too the Treaty does not prohibit the Government of Honduras from taking property of a United States citizen prior to the payment of compensation. It accordingly is fully consistent with the Constitution for the Government of the United States to lend assistance to military training activities at the RMTC.

b. Respondents also have alleged that the actions at issue "are beyond [petitioners'] express or implied authority under the laws and treaties of the United States" (C.A. App. 11). However, this Court has held that in making such a claim, " 'it is necessary that the plaintiff set out in his complaint the statutory limitation on which he relies.' " *Malone* v. *Bowdoin*, 369 U.S. 643, 648 & n.9 (1962), quoting *Larson* v. *Domestic & Foreign Corp.*, 337 U.S. 682, 690 (1949). Respondents have failed to iden-

tify any such limitation. This defect alone required dismissal of their suit. In any event, respondents, like the majority of the court of appeals, have wholly ignored authorization for petitioners' actions that is so clear as to render this suit frivolous.

Of course, at the core of the case are the President's constitutional powers as Commander-in-Chief and the "sole organ" of the Nation in foreign affairs. U.S. Const. Art. II, § 2; *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. at 319. But in addition, there is explicit statutory authorization for the President to assist in the training activities of the RMTC. As Judge Scalia pointed out (App., *infra*, 121a-122a n.7), the President is expressly authorized by the Foreign Assistance Act of 1961 to furnish "military education and training to military and related civilian personnel of foreign countries * * * through * * * attendance at military educational and training facilities * * * abroad" (22 U.S.C. 2347(1)) and "to furnish military assistance, on such terms and conditions as he may determine, to any friendly country * * * by * * * assigning or detailing members of the Armed Forces of the United States and other personnel of the Department of Defense to perform duties of a noncombatant nature" (22 U.S.C. 2311(a)(2)).

The majority below seemed to believe that it is necessary to find a more specific congressional authorization for military assistance if it is to be furnished on land owned by a United States citizen. See App., *infra*, 46a-48a & n.95. That obviously is not so. Congressional authorizations typically are written in broad terms to afford the Executive necessary flexibility, without specifying the precise manner or situs of the activity. This approach is all the more appropriate with regard to the President's conduct of foreign relations and military affairs, and this Court in fact has acknowledged "the unwisdom of requiring Congress in this field of governmental power to lay down narrowly definite standards by which the President is to be governed." *United States* v. *Curtiss-Wright Ex-*

port Corp., 299 U.S. at 321-322. See *Haig* v. *Agee*, 453 U.S. 280, 291-292 (1981). In the present context, for example, where military training is to be furnished to military personnel of a foreign nation within its territory, the location necessarily depends upon a designation of an appropriate site by the government of that country, as occurred in this case.

But even assuming that more specific authorization were required, it plainly exists here. Congress has been fully apprised of the President's use of foreign military assistance funds for the RMTC and has approved that action. In the State Department's official explanation of the President's proposals to implement the recommendations of the National Bipartisan Commission on Central America (the Kissinger Commission), the Department reported that "[t]he RMTC was established in Honduras in 1983 on a temporary, austere basis" and "has proven to be extremely valuable as a low-cost way to provide large-scale training to Honduran and Salvadoran troops in a realistic environment" (U.S. Dep't of State, *Briefing Book: Central America Democracy, Peace and Development Initiative* 8 (Feb. 1984). The State Department further stated that the President was requesting a supplemental appropriation in the amount of $25 million for fiscal year 1984 and an appropriation of $20 million for fiscal year 1985 for activities associated with a more permanent training center (*id.* at 8-9).[8]

Thereafter, the background of the RMTC and the manner in which the newly requested funds would be used were explained in detail by the Department of Defense in response to questions from the Chairman of the responsible House Appropriations Subcommittee.[9] Although the

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[8] We have been informed by the Department of Defense that this document was distributed to all Members of Congress in connection with the President's proposals. We have lodged a copy of the document with the Clerk of this Court.

[9] See Transcript of House Appropriations Committee, Foreign Operations Subcommittee (Mar. 8, 1984). The Defense Department

House of Representatives subsequently earmarked only $3.1 million for the RMTC in its version of the supplemental appropriation bill (see H.R. Rep. 98-916, 98th Cong., 2d Sess. 92 (1984)), the Second Supplemental Appropriation Act for fiscal year 1984 as finally enacted and signed into law on August 22, 1984 appropriated a lump sum of $140 million for foreign military assistance, without restricting the use of funds for the RMTC to a particular amount. Pub. L. No. 98-396, 98 Stat. 1405.

Moreover, as we have explained (see pages 8-9, *supra*), Congress subsequently enacted the Foreign Assistance Appropriations Act for fiscal year 1985, which makes available more than $800 million to the President for foreign military assistance. That Act does not allocate a specific amount for the RMTC, but Congress had been made fully aware of the President's plans to use $20 million of those funds for the RMTC. See page 16, *supra*. Congress's approval of the use of funds for that purpose is in any event demonstrated by the proviso that specifically refers to the RMTC. Although the proviso prohibits the use of new funds for the RMTC until certain issues have been resolved, Congress did not question the authority of the President to lend assistance to what the proviso refers to as the "existing Center." To the contrary, the Conference Report expressed support for the "concept of such a Center" (130 Cong. Rec. H11940 (daily ed. Oct. 10, 1984)), and Congress appropriated substantial additional funds for the RMTC, either at its

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stated that foreign military assistance funds previously made available for Honduras and El Salvador under the Arms Export Control Act and the Foreign Assistance Act were used to assist in establishing the RMTC, that "[t]he Administration consulted with the Senate Foreign Relations and House Foreign Affairs Committees prior to the establishment of the RMTC," and that "Congress was provided the text of the Terms of Reference for the RMTC following their adoption by the U.S. and Honduras on June 16, 1983" (*id.* at 1). We have lodged a copy of the pertinent portions of this transcript with the Clerk of this Court.

existing site or a new location, subject only to the specified conditions.

In sum, subject to limitations on the expenditure of newly appropriated funds, it is clear beyond question that Congress, with full knowledge of the interest of a United States citizen in the land, has approved the President's actions in lending assistance to the RMTC. For this reason, contrary to the view of the court of appeals (App., *infra*, 14a-16a), this case presents no issue of separation of powers such as that involved in *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952), where the President's actions were demonstrably inconsistent with the intent of Congress (343 U.S. at 586; *id.* at 609 (Frankfurter, J., concurring)). *Compare Dames & Moore* v. *Regan*, 453 U.S. 654, 674 (1981). As a result, even assuming there were no other obstacles to this suit (but see pages 19-29, *infra*), there could be no basis whatever for the courts below to inquire into the relative responsibilities of Honduras and the United States in establishing and operating the RMTC.[10]

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[10] Respondents' alternative claim that the Due Process Clause was violated because they were deprived of the use of their property without notice and an opportunity for a prior hearing (App., *infra*, 16a-17a) is equally insubstantial. Respondents' land in Honduras was formally seized by the Government of Honduras. The Due Process Clause of the United States Constitution does not apply to such action by a foreign sovereign within its own territory. In any event, the official decrees of the Congress and President of Honduras notified respondents of the relevant circumstances, and the court of appeals did not suggest what issues respondents would be entitled to litigate in a "hearing" on the question of the use of land in a foreign country for military training. See *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982); *Bi-Metallic Investment Co.* v. *Colorado*, 239 U.S. 441 (1915).

We note as well that respondents do not (and, under the act of state doctrine, cannot) challenge the validity of the occupation of the land by the Honduran Armed Forces or the assertion of control over the land by the Government of Honduras. Accordingly—even assuming that the Due Process Clause might apply in some circumstances to actions of United States' military personnel on

2. There are, however, far deeper and more disturbing flaws in the court of appeals' decision, because this suit is barred by the doctrines of political question and act of state, or, at the very least, by compelling prudential considerations that preclude equitable relief.

a. A number of the factors this Court has identified under the political question doctrine are directly applicable to this case. The Court has made clear that "[c]ertainly it is not the function of the Judiciary to entertain private litigation—even by a citizen—which challenges the legality, the wisdom, or the propriety of the Commander-in-Chief in sending our armed forces abroad or to any particular region." *Johnson* v. *Eisentrager*, 339 U.S. 763, 789 (1950). The court of appeals sought to avoid that principle here on the ground that respondents do not challenge the United States' military presence in Honduras or object to United States aid to an RMTC in Honduras, but instead challenge only the presence of military personnel and the RMTC on their particular tract of land. App., *infra*, 19a-20a, 22a-24a. This distinction finds no basis in the political question doctrine. The President's discretionary determination to furnish military personnel and other assistance to Honduras in connection with an RMTC, which the court of appeals appears to concede is nonjusticiable, necessarily subsumes the right of the President or his subordinates to make subsidiary judgments regarding the type and location of any activity executing that policy judgment. Cf. *United States* v. *S.A. Empresa de Viacao Aerea Rio Grandense* (*Varig Airlines*), No. 82-1349 (June 19, 1984), slip op. 12-13; *Dalehite* v. *United States*, 346 U.S. 15, 35-36 (1953).

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foreign soil—because the Government of Honduras had the unquestioned right in this case to take possession of the land, respondents could have no right to notice and an opportunity for a hearing in connection with the Honduran Government's invitation to United States' personnel to enter the land as well.

Thus, assuming arguendo that officials of the United States played a role in selecting the site for the present RMTC, it is not for the courts below to inquire, as respondents have sought to do through discovery, into "the extent to which the United States had alternatives available to it other than [respondents'] site (see 7/15/83 Tr. 22). There is, in any event, "a lack of judicially discoverable and manageable standards for resolving" such a question (*Baker* v. *Carr*, 369 U.S. 186, 217 (1962)), especially in light of the military, political and other considerations that must inform it and the potential for inquiry into confidential diplomatic and other information. In this as in other aspects of the United States' role in Central America, there is an "impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government" and an "unusual need for unquestioning adherence to a political decision already made" (*Baker* v. *Carr*, 369 U.S. at 217). Moreover, because the decree by the President of Honduras formally designates respondents' property as the site for the RMTC, judicial inquiry into the suitability of that site also would express a lack of respect due an independent sovereign with regard to the best use of land within its own territory.

Nor is this case remotely like *Youngstown Sheet & Tube Co.* v. *Sawyer*, *supra*, upon which the court of appeals relied in finding this case to be justiciable (see App., *infra*, 20a, 23a-24a). In *Youngstown*, the President had seized the Nation's steel industry, "an action of profound and demonstrable domestic impact" (*Goldwater* v. *Carter*, 444 U.S. 996, 1004-1005 (1979) (Rehnquist, J., concurring)); here, by contrast, the Executive action "is 'entirely external to the United States, and [falls] within the category of foreign affairs'" (*id.* at 1005), quoting *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. at 315). Furthermore, in *Youngstown*, the President's action was only indirectly related to his explicit constitutional authority as Commander-in-Chief (343 U.S. at

587), while here the President's assignment of military personnel to conduct military training in a foreign country falls squarely within that power.

Finally, the court of appeals' decision invites "multifarious pronouncements by various departments on one question" (*Baker* v. *Carr*, 369 U.S. at 217). The text and background of the Appropriations Act for fiscal year 1985 express Congress's intent that the resolution of respondents' claim is the responsibility of the Government of Honduras,[11] that the President will conduct negotiations with Honduras regarding the RMTC on that basis (compare *Dames & Moore* v. *Regan*, 453 U.S. at 679-688), and that the President will determine what actions should be taken under the Caribbean Basin Initiative and other expropriation-related legislation if Honduras fails to resolve respondents' claim within 180 days. The further judicial proceedings contemplated by the court of appeals would undermine the Nation's ability to speak with one voice in these negotiations—by casting doubt on the legality of the actions of the United States Government with respect to the existing center, by impugning the sovereign acts of the Honduran Government in establishing the RMTC as a facility of its own Armed Forces, and by suggesting that Honduras is not responsible for paying compensation to respondents for legitimate claims (see C.A. App. 51).

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[11] The House of Representatives passed a provision in the Department of Defense authorization bill for fiscal year 1985 that would have provided for proceedings before the Foreign Claims Settlement Commission to determine the validity of respondent Ramirez's claim and for the *United States* to pay the uncompensated amount of any losses. See 130 Cong. Rec. H4743-H4745 (daily ed. May 23, 1984). However, this provision was specifically deleted by the Conference Committee, which concluded that the claim instead "should be resolved through negotiation or other appropriate means agreed upon by the claimant and the *Government of Honduras*" and that "[t]he Secretary of State should continue to lend all appropriate assistance to settlement of such claims by the *Government of Honduras* or by a third party procedure" (H.R. Conf. Rep. 98-1080, *supra*, at 285 (emphasis added)).

b. The court of appeals also clearly erred in declining to dismiss this suit based on the act of state doctrine. Under that doctrine:

> Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory.

Underhill v. *Hernandez*, 168 U.S. 250, 252 (1897), quoted in *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 416 (1964). See also *Oetjen* v. *Central Leather Co.*, 246 U.S. 297 (1918); *Ricaud* v. *American Metal Co.*, 246 U.S. 304, 310 (1918). The doctrine requires that an American court recognize as valid an action by a foreign sovereign with regard to property within its territory. *Alfred Dunhill of London, Inc.* v. *Cuba*, 425 U.S. 682, 686, 691 nn. 7-8 (1976).

In this case, the Congress of Honduras formally approved the establishment of the RMTC and invited foreign personnel to train and be trained there. Because respondents concededly do not and cannot challenge the validity of this official decree (App., *infra*, 73a, 90a)—and therefore do not and cannot challenge the authority of the Honduran Government to invite United States personnel to participate in activities at the RMTC—it follows that, for purposes of this case, any United States personnel engaged in training activities at the RMTC must be regarded from respondents' perspective as lawfully present.[12] Moreover, the President of Honduras

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[12] The court of appeals sought to avoid this conclusion by noting that the resolution of the Congress of Honduras does not specifically mention the particular site of the RMTC or respondents' property (App., *infra*, 72a-73a). But the resolution states that the Republic of Honduras "did establish" a RMTC "located in the jurisdiction of the Municipality of Trujillo, Department of Colon" (App., *infra*, 255a). This obviously refers to the RMTC on respondents' land. The act of state doctrine is not rendered inapplicable merely because the Honduran Congress's resolution did not describe the site

issued a decree declaring that the RMTC is "an activity of the Armed Forces of Honduras" and that the land, which was specifically identified, shall be expropriated for the RMTC.[13]

The thrust of respondents' argument seems to be that although the official decrees are valid on their face, the Congress and President of Honduras did not mean what they said—that although the Government of Honduras has officially declared the RMTC within its borders to be "an activity of the Armed Forces of Honduras," the RMTC actually should be considered an activity of the United States. In other words, respondents accuse the Government of Honduras not of illegality, but of mendacity, and they ask a court of the United States to adjudicate that question. And to establish their case, respondents have argued (see page 5, *supra*), and the court of appeals agreed (App., *infra*, 75a, 86a-87a, 97a), that they should be permitted to engage in discovery to determine the respective roles of the United States and Honduras in creating and operating the RMTC, the number of Honduran troops there, and the extent of their occu-

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by metes and bounds or specifically identify the current owner. See note 13, *infra*.

[13] The court of appeals attempted to impeach the force of this Presidential decree by suggesting that the decree does not constitute a completed expropriation under Honduran law and does not assert that title to the relevant portion of the property is in the Government of Honduras (App., *infra*, 73a-74a). The court noted in this regard that Honduras has not yet paid compensation and that Honduras "reportedly" is reluctant to take the final steps of expropriation because factions of the Honduran military are skeptical about the value of the RMTC (*id.* at 74a). The court of appeals missed the point. It is irrelevant for present purposes whether a completed expropriation within the meaning of the domestic law of Honduras has yet occurred and whether Honduras may ultimately abandon the RMTC endeavor, either on respondents' land or generally. The Presidential decree implementing the congressional resolution indisputably asserted control over the designated land for the time being. That is sufficient for purposes of the act of state doctrine.

pation of the ranch. The act of state doctrine does not tolerate such impugning of the acts of an independent nation.

As Judge Starr stated in his dissenting opinion below (App., *infra*, 162a-163a):

> Assuming that the majority does not wish to suggest that the United States simply invaded Honduras, its invitation to the parties to plumb the timing of and relative responsibilities for the establishment of the RMTC is a flagrant affront to the sovereignty of Honduras. Attempts by the parties to find "facts" with respect to these "issues" would in effect, question Honduran autonomy and raise the specter of a United States court declaring the government of an allied nation so subject to U.S. "manipulation" as to be incapable of independent sovereign acts worthy of deference under the act of state doctrine.

That result would be especially intolerable in this case, because the Congress and President of the United States agree with the Congress and President of Honduras that the RMTC is an activity of the Government of Honduras. See *Sumitomo Shoji America, Inc.* v. *Avagliano*, 457 U.S. 176, 183-185 (1982).

Against this background, the court of appeals' suggestion (App., *infra*, 90a-92a) that the Executive cannot invoke the act of state doctrine in this case is both patently wrong and fraught with danger. The court acknowledged that "[s]eparation of powers concerns are the underpinnings of the act of state doctrine" and that "the defense bars adjudication when it appears that relief 'would interfere with delicate foreign relations conducted by the political branches'" (*id.* at 70a-71a (footnote omitted), quoting *First National City Bank* v. *Banco Nacional de Cuba*, 406 U.S. 759, 775-776 (1972) (Powell, J., concurring)). The credibility and effectiveness of the Executive in this Nation's diplomatic relations would be seriously undermined if the courts of the United States could ignore the Executive's insistence that the acts of state of

the sovereign nations with which it deals must be respected.

c. In any event, as Judge Scalia explained (App., *infra*, 174a-187a, 137a-147a), a number of factors informing the exercise of a court's equitable discretion require dismissal of this suit. This Court has stressed that "courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305, 312 (1982). Similar considerations apply to the availability of declaratory relief. See *Samuels* v. *Mackell*, 401 U.S. 66, 69-74 (1971). In this case, the principles of separation of powers, international comity, and nonjusticiability that underlie the doctrines of political question and act of state furnish compelling reasons why the courts below cannot properly grant equitable relief.

Such relief would interfere with the activities of United States military personnel assisting a friendly nation, thereby directly impinging upon the President's Commander-in-Chief and foreign affairs responsibilities, and would undermine the ability of the United States to meet its commitment to support the peace and security of this critical region of the world. Indeed, the mere pendency of judicial proceedings calling into question the legality of petitioners' actions on behalf of the President threatens to damage the credibility of the United States in these matters and to interfere with sensitive diplomatic discussions regarding relations between the two nations, Honduras's role in Central America, the future of the RMTC, and even the resolution of respondents' own claims. Furthermore, because the Government of Honduras has formally invited United States military personnel to participate in training activities at the RMTC, proceedings in district court challenging the right of United States military personnel to be on respondents' land necessarily would call the validity of that invitation into question and thus "impugn foreign law" and

the legality of the presence of Honduras's own troops there. See *Steele* v. *Bulova Watch Co.*, 344 U.S. 280, 289 (1952). It therefore would be appropriate for the Court to order dismissal of the case on equitable grounds, informed by these and other considerations, without reaching the question whether the political question and act of state doctrines, standing alone, bar this suit. See App., *infra*, 136a-139a & n.13 (Scalia, J., dissenting).[14]

Dismissal on equitable grounds also would be consistent with the long-established rule that courts generally will not enjoin a trespass on land in another jurisdiction. See *Ellenwood* v. *Marietta Chair Co.*, 158 U.S. 105, 107 (1895); Restatement (Second) of Conflicts of Laws § 87 comment d (1971). Where, as here, the land at issue is situated in a foreign country, this rule recognizes that "a nation's control over the land within its borders is the most sovereign of its functions, with which no other nation should interfere," and that it "is difficult to monitor compliance with such decrees in far-off lands" (App., *infra*, 140a-141a (Scalia, J., dissenting)). The rule has particular force in this case, because respondent Ramirez has chosen to engage in business in Honduras through corporations that are organized under and fully subject to the laws of Honduras, and the property in question is owned by these Honduran corporations. For this reason, respondents should seek relief in Honduras, at least in the first instance. Yet respondents have declined to request initiation of the valuation proceedings that Honduras has made available. Finally, although in our view

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[14] This Court has stated that justiciability concerns, including the separation of powers, "shade into those determining whether the complaint states a sound basis for equitable relief." See *O'Shea* v. *Littleton*, 414 U.S. 488, 499 (1974); *Allen* v. *Wright*, No. 81-757 (July 3, 1984), slip op. 12-14, 22-23. We note as well that any relief granted against petitioners would not necessarily redress respondents' alleged injuries, because Honduran troops and other personnel might remain. See *Allen* v. *Wright*, slip op. 21; *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976).

there has been no taking of respondents' property that could properly be attributed to the United States, if respondents believe otherwise they could bring an action under the Tucker Act for just compensation, since petitioners' actions with respect to the RMTC have been fully authorized. Compare *Dames & Moore* v. *Regan*, 453 U.S. at 688-689.[15]

In any event, whatever might have been the case before, Congress's enactment of the Appropriations Act for fiscal year 1985 has removed any remaining doubt that the courts below cannot proceed with this suit. As we have explained (see pages 17-18, *supra*), that Act entirely eliminates any basis for respondents' contention that petitioners' actions with regard to the RMTC are unauthorized. In addition, by imposing the specified conditions on the expenditure only of newly appropriated funds for the RMTC, Congress already has afforded as much of the relief that respondents seek in this case (*i.e.*, withdrawal of United States personnel and assistance from their land) as Congress determined was appropriate. It is not for the courts below to strike a different balance by barring all assistance to the RMTC at its present site. Nor is there any indication that the expenditure of remaining fiscal year 1984 funds to maintain the RMTC in a caretaker status pending the resolution of broader issues will

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[15] There is no merit whatever to the remarkable and unprecedented assertion by the majority below (App., *infra*, 53a-57a) that injunctive relief against the taking of property might be available even if the Executive's actions are fully authorized by Act of Congress and the Constitution, on the ground that monetary compensation might be an inadequate remedy if respondents' land is uniquely suited to ranching. Even assuming that the RMTC is a project of the United States Government, this Court's decisions refute the notion that the United States could be prohibited from taking private property for a public purpose—much less a purpose relating to military or foreign affairs—simply because it has a special value to the owner. See, *e.g.*, *Hawaii Housing Authority* v. *Midkiff*, No. 83-141 (May 30, 1984), slip op. 9-12; *United States* v. *50 Acres of Land*, No. 83-1170 (Dec. 4, 1984), slip op. 11.

have any significant adverse consequences for respondents.

Moreover, if it is determined in the on-going diplomatic discussions that the RMTC should be moved to a new permanent location or that the United States' assistance to the RMTC should be terminated, the resulting withdrawal of United States personnel will afford respondents all of the relief they seek in this suit. By the same token, there can be no substantial infusion of new funds for the RMTC, either on respondents' land or elsewhere, unless the President determines that Honduras recognizes the need to compensate respondent Ramirez as required by international law and is taking appropriate steps to discharge that obligation. Congress has further required the President to consider taking action under expropriation-related legislation in order to apply pressure to the Government of Honduras to resolve respondents' claim. Congress thus has prescribed the measures it deems appropriate to obtain redress from Honduras for the injury respondents allege in this suit and has made clear that any participation by the United States Government should be through diplomatic channels. In short, the Legislative and Executive Branches have gone to extraordinary lengths to secure a resolution of this matter. There is no basis for participation in that process by the Judicial Branch.

3. The foregoing discussion of why this suit should be dismissed also sufficiently demonstrates why review by this Court is warranted. The court of appeals' decision directs the district court to inquire further into matters pertaining to the RMTC at the very time when the Executive—in conformity with the express intent of Congress—is engaged in sensitive diplomatic negotiations with the Government of Honduras on all matters pertaining to the present and future operation of the RMTC, including resolution of respondents' claim, as well as other issues in the bilateral relationship between the two Nations and the peace and security of Central America gen-

erally. The initiation of discovery by respondents and further proceedings in district court could seriously disrupt that process and undermine the credibility of the United States' commitment to an undertaking in Central America that both Congress and the President have deemed essential to our national security and foreign relations. See pages 3-5, 9, *supra*. Compare *Regan* v. *Wald*, No. 83-436 (June 28, 1984), slip op. 6 & n.11, 19-20. Moreover, the court of appeals' inexplicable refusal even to entertain the Government's rehearing petition prevented any consideration below of the dispositive effect on this case of the Appropriations Act for fiscal year 1985. That fundamental defect should not be left uncorrected.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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ADDENDUM

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Due Process Clause of the Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *.

2. Section 503 of the Foreign Assistance Act of 1961, 22 U.S.C. 2311, provides in pertinent part:

> **(a) Defense articles and services; noncombatant personnel; transfer of funds**
>
> The President is authorized to furnish military assistance, on such terms and conditions as he may determine, to any friendly country or international organization, the assisting of which the President finds will strengthen the security of the United States and promote world peace and which is otherwise eligible to receive such assistance, by—
>
> (1) acquiring for any source and providing (by loan or grant) any defense article or defense service;
>
> (2) assigning or detailing members of the Armed Forces of the United States and other personnel of the Department of Defense to perform duties of a noncombatant nature; * * * *

3. Section 541 of the Foreign Assistance Act of 1961, 22 U.S.C. 2347, provides:

> The President is authorized to furnish, on such terms and conditions consistent with this chapter as the President may determine (but whenever feasible on a reimbursable basis), military education and training to military and related civilian personnel of

foreign countries. Such training and education may be provided through—

(1) attendance at military educational and training facilities in the United States (other than Service academies) and abroad;

(2) attendance in special courses of instruction at schools and institutions of learning or research in the United States and abroad; and

(3) observation and orientation visits to military facilities and related activities in the United States and abroad.

4. Title III of the Foreign Assistance and Related Programs Appropriations Act of 1985, which was enacted in Section 127 of the Continuing Appropriations, 1985—Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1893-1894, provides in pertinent part:

TITLE III—MILITARY ASSISTANCE FUNDS APPROPRIATED BY THE PRESIDENT

Military Assistance

For necessary expenses to carry out the provisions of section 503 of the Foreign Assistance Act of 1961, including administrative expenses and purchase of passenger motor vehicles for replacement only for use outside of the United States, $805,100,000:

* * * * *

Provided further, That none of the funds made available by this paragraph may be obligated or expended for the construction or operation of a Regional Military Training Center in Honduras except as provided through the regular notification process of the Committees on Appropriations and until the President provides to the Committees on Appropriations of the Senate and the House of Representatives

(1) a report that the Government of Honduras has provided a site for such a Center and assumed responsibility for any competing claims to rights of use or ownership of such site, and has provided written assurances to make that site available on a long-term basis for training by the armed forces of other friendly countries in the region as well as those of Honduras; (2) a detailed plan, with specific cost estimates, for the construction of such a Center at the site provided by the Government of Honduras; and (3) a determination that the Government of Honduras recognizes the need to compensate as required by international law the United States citizen who claims injury from the establishment and operation of the existing Center, and that it is taking appropriate steps to discharge its obligations under international law, in particular, the Treaty of Friendship, Commerce and Consular Rights with the United States, as well as its letter of December 14, 1983, to the United States Trade Representative: *Provided further*, That the President shall report to the Committees sixty days after the passage of this resolution and again in one hundred and twenty days on progress in resolving this claim; in one hundred and eighty days, the President shall report on the resolution of the claim or, if Honduras has failed to resolve the claim, on the actions which he proposes to take in response to the situation and in particular actions with respect to the granting of preferential trade benefits under the Caribbean Basin Initiative, disbursement of economic support funds or any other funds provided under this resolution and review of the status of Honduras under other, expropriation-related legislation.

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